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भारत निर्वाचन आयोग

अधिसूचना

नई दिल्ली, 28 अप्रैल, 1998

आ.अ. 252 (अ).—भारत निर्वाचन आयोग सिविल रिट अर्जी सं. 3681/98 में पंजाब और हरियाणा उच्च न्यायालय, चण्डीगढ़ के तारीख 17-3-1998 के आदेश को लोक प्रतिनिधित्व अधिनियम, 1951 (1951 का 43) की धारा 106 के अनुसरण में एतद्वारा प्रकाशित करता है।

[आदेश अंग्रेजी अनुवाद में छपा है]

[सं. 82/रा. स.-पंजाब/98]

आदेश से,

के.आर. प्रसाद, सचिव

ELECTION COMMISSION OF INDIA

NOTIFICATION

New Delhi, the 28th April, 1998

O.N. 252 (E).—In pursuance of Section 106 of the Representation of the People Act, 1951 (43 of 1951) the Election Commission of India hereby publishes the order dated 17-3-1998 of the High Court of Punjab and Haryana at Chandigarh in Civil Writ Petition No. 3681/98.

C.W.P. No. 3681 OF 1998

PB. PRADESH CONGRESS COMMITTEE VS ELECTION COMMISSION OF INDIA AND OTHERS.

Present : Dr. Balram Gupta, Advocate, for the petitioner.

Mr. H.L. Sibal, Sr. Advocate with

Ms. Rita Kohli, Advocate, for respondent No. 1.

Mr. G.S. Grewal, Advocate General, Punjab with
Mr. G.S. Dhillon, Addl. A.G. Punjab, for respondent No. 3

A prayer has been made in this petition under Article 226/227 of the Constitution of India for issuance of a writ in the nature of Certiorari or any other appropriate writ, order or direction quashing the communications from the Election Commission of India dated March 9, 1998 and the notices of Election dated March 10, 1998, annexed as Annexures-P-2, P-3, P-5 and P-6 respectively and for issuance of a writ in the nature of mandamus or any other appropriate writ or direction directing the respondents i.e. Election Commission of India, Chief Election Commissioner of India and the Returning Officer to the Council of States, (Secretary, Punjab Vidhan Sabha, Chandigarh) to issue a single notification for holding the election with regard to five seats pertaining to the State of Punjab for Council of States.

Notice of motion was issued to the respondents returnable for 16-3-1998.

Short written statement has been filed in court on behalf of respondent No. 3 which is ordered to be placed on record.

In the written statement stand has been taken by the respondent that election process for the election of Members of Rajya Sabha has commenced by the issuance of two notifications dated 10-3-1998 and in pursuance of the said notifications the last date of filing of nomination papers is 17-3-98 and the scrutiny of nomination papers will take place on 18-3-98 and the last date of withdrawal is 20-3-98 and election, if necessary, shall take place on 27-3-98. It has been specifically stated in the written statement that the election process for the election of five Rajya Sabha Members has started and in these circumstances the election can only be challenged by filing of an election petition.

Learned Advocate General, Punjab appearing for respondent No. 3 and Shri Hira Lal Sibal, learned Sr. Advocate appearing on behalf of respondent No. 1 have taken a preliminary objection that after the issuance of notification for the election of Rajya Sabha Members from Punjab and after the election process for electing those Rajya Sabha Members, their election can be challenged only by way of an election petition under the relevant provision of the Representation of People Act, 1951.

Learned counsel for the respondents have also taken a preliminary objection that under Article 329 of the Constitution of India no election to either house of Parliament or to the House or either House of Legislature of a State can be called in question and, thus, this petition is not competent and is liable to be dismissed.

Learned counsel for respondent No. 1 has also taken a preliminary objection that the Union of India has not been made a party by the petitioner as the notification for holding the election has been made by the Union of India only and not by the Election Commission of India.

Learned counsel for the respondents have relied upon AIR 1978 SC 851, Mohinder Singh Gill and another Vs The Chief Election Commissioner, New Delhi and others, AIR 1988 SC 61, The Election Commission of India Vs Shivaji and others, AIR 1955 SC 233, Hari Vishnu Kamath Vs Ahmad Ishaque and others and two judgements of the Delhi High Court referred to in the written statement to substantiate their arguments.

Learned counsel for the respondents have also brought to our notice the notification dated 10-3-1998 of the Government of India, Ministry of Law and Justice, Legislative Department, published on the same date in the Punjab Government Gazette Extraordinary vide which the President of India is pleased to call upon the elected members of the Legislative Assembly of the State of Punjab, to elect, in accordance with the provisions of the Representation of People Act, 1951 and the rules and orders made thereunder two members for the purpose of filling the seats of S/Shri Iqbal Singh and Surinder Kumar Singla, Members of the Council of States who are retiring on 9-4-98 on the expiration of their term of office. It has also been brought to our notice another notification of the Government of India, Ministry of Law and Justice, Legislative Department, dated 10-3-98 published in the Punjab Government Gazette Extraordinary on the same date, vide which the President of India is pleased to call upon the elected members of the Legislative Assembly of the State of Punjab, to elect, in accordance with the provisions of the said Act and the rules and orders made thereunder, three members for the purpose of filling the seats of S/ Shri Jagir Singh, Balbir Singh and Venod Kumar, members of the Council of States who are retiring on 9-4-98 on the expiration of their term of office.

It has also been brought to our notice that in pursuance of the issuance of the above said two notifications, by the President of India, the Election Commission of India in exercise of powers conferred by sub-section (1) of Section 39 of the Representation of the People Act, 1951 has fixed—

- 17th March, 1998, as the last date for making nominations;
- 18th March, 1998, as the date for scrutiny of nominations;
- 20th March, 1998, as the last date for the withdrawal of candidatures;
- 27th March, 1998, as the date on which a poll shall, if necessary, be taken;
- 30th March, 1998, as the date before which the election shall be completed.

In view of the preliminary objections taken by the respondents, learned counsel for the petitioner submits that he does not challenge the election of five members to the Rajya Sabha from the State of Punjab. He is only praying for a direction from this Court for quashing two different recommendations of the same date i.e. 9-3-98 annexed as Annexures-P-2 & P-3 with the petition, by the Election Commission of India to the President for issuance of a notification under Section 12 of the Representation of People Act, 1951 calling upon the elected members of the Legislative Assembly of the State of Punjab to elect three members and two members respectively in accordance with the provisions of the said Act and Rules and orders made thereunder for the purpose of filling the seats of S/Shri Jagir Singh, Balbir Singh, Venod Kumar, Iqbal Singh and Surinder Kumar Singla of the Council of States elected from the State of Punjab and who were due to retire on the expiration of their term of office on 9-4-1998, as well as the notices of election dated March 10, 1998, annexed as Annexures-P-5 and P-6 with the petition. The learned counsel seeks a direction to be issued to the respondent-Election Commission of India to issue a single notification for holding the election with regard to the five seats pertaining to the State of Punjab for Council of States (Rajya Sabha). He did not press the allegations of malafide made against respondent No. 2-Election Commissioner of India, in the petition.

The Prayer for directing the Commission to modify its recommendations to the President at this stage to issue a single notification calling upon the elected members of the Legislative Assembly of the State of Punjab to elect five members to the Rajya Sabha is meaningless when admittedly two different notifications on two different recommendations by the Commission to the President have already been issued by the Government of India, Ministry of Law and Justice (Legislative Department) and have been published in the Punjab Government Gazette Extraordinary, as stated above. Even no direction can be issued at this stage to treat two different notifications for election of five members of the Rajya Sabha as a single one as obviously Union of India to whom such a direction could be issued has not been made a party by the petitioner. Moreover, as has been stated above, the moment two separate notifications have been issued for the election of the members of the Rajya Sabha the election process has started and once the election process starts then the Court is very well advised not to interfere in the election process. The only remedy for the petitioner is to challenge the final election in accordance with the procedure as provided under the Representation of People Act, 1951.

Article 329 of the Constitution of India clearly mandates that no election to either House of Parliament shall be called in question except by an election petition presented to such authority and in such manner as may be provided for by or under any law made by the appropriate Legislature. It has been held by the Supreme Court that the word 'election' has by long usage in connection with the process of selection of proper representatives in democratic institutions acquired both a wide and a narrow meaning. In the narrow sense it is used to mean the final selection of a candidate which may embrace the result of the poll when there is polling, or a particular candidate being returned unopposed when there is no poll. In the wide sense, the word is used to connote the entire process culminating in a candidate being declared elected and it is in this wide sense that the word is used in Part XV of the Constitution in which Article 329 (b) occurs.

Admittedly, the recommendations of the Commission to the President to issue notifications for election of the members of the Rajya Sabha have been merged into the final notifications issued by the Government of India, Ministry of Law and Justice (Legislative Department) calling upon the Legislature of the State to elect five members to the Rajya Sabha and at the cost of repetition once the election process has started after issuance of the notifications for election of the members to the Rajya Sabha, the interference, of this Court in the process of election is not called for. However, we refrain from commenting upon the legality or the validity of the separate recommendations of the Commission to the President for issuing separate notifications for election of the Rajya Sabha members.

In view of our discussion made above, we are not left with any choice except to dismiss this petition. The writ petition is dismissed; however, without any order as to costs.

A copy of this order be given *dasti* on payment of usual charges.

March 17, 1998

Sd/- HARPHUL SINGH BRAR
JUDGE

Sd/- K.S. KUMARAN
JUDGE

[No. 82/CS-PB-98]

K.R. PRASAD, Secy.

